

INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the New Motor Vehicle Board of the State of California to add sections 551.14, 551.15, 551.16, 551.17, of Article 1, to amend section 553.40 of Article 1, and to amend section 595 of Article 1, Chapter 2, Division 1, of Title 13 of the California Code of Regulations.

INTRODUCTION

The New Motor Vehicle Board ("Board") is an agency within the Department of Motor Vehicles ("Department") with oversight provided by Business, Transportation and Housing Agency. The Board consists of nine members, seven of which are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee (see Vehicle Code sections 3000 and 3001).

The duties of the Board include the following:

1. To Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.
2. To hear and determine "appeals" which are filed by specified occupational licensees within the new motor vehicle industry as a result of adverse disciplinary action taken by the Department against the license of such entity. (Vehicle Code section 3050(b)).
3. Consider any matter concerning the activities or practices of any person applying for or holding a specified type of occupational license. These disputes are considered by the Board as a result of the filing of a "petition", which may be done by any person. (Vehicle Code section 3050(c)).
4. To hear and decide "protests" filed by new motor vehicle dealers against their respective franchisors, pursuant to the provisions of the Automotive Franchise Act. (Vehicle Code sections 3050(d), 3060, 3062, 3064, 3065, and 3065.1). These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

SECTION 551.14

PURPOSE OF THE REGULATION

Vehicle Code section 3050(c)(2) provides the statutory authority for the Board to engage in informal mediation in petitions. It provides that the Board can undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. Since 1991, the Board has received fourteen requests for informal mediation. The procedures for requesting informal mediation are ad hoc as there are no regulations which explain the process.

The addition of section 551.14 would formalize the procedure for requesting informal mediation. The proposed regulation provides that informal mediation is voluntary, informal, and nonadversarial. It would only be available for petition causes of action under Vehicle Code section 3050(c). The request for informal mediation must set forth the nature of the matter the Board is requested to mediate, substantially comply with the provisions contained in subdivision (c) of section 551.14, and be served on the licensee or applicant for license whose activities or practices are in question.

NECESSITY

The proposed regulation is necessary to ensure that the Board offers informal mediation to all potential parties and formalizes the procedures for consistency.

SECTION 551.15

PURPOSE OF THE REGULATION

The addition of section 551.16 would permit discovery in informal mediation at the discretion of the Board, its Secretary, or a hearing officer designated by the Board or its Secretary. The discovery permitted would be consistent with the Code of Civil Procedure and Vehicle Code sections 3050.1 and 3050.2.

NECESSITY

The proposed regulation is necessary to allow the parties to an informal mediation to engage in discovery.

SECTION 551.16

PURPOSE OF THE REGULATION

The addition of section 551.16 explains the informal mediation process. Since informal mediation is voluntary, the first step in the process is to ascertain whether the licensee or applicant for license whose activities or practices are in question is agreeable to participating. If the licensee or applicant is not agreeable, then either party may request that this matter be converted to a petition proceeding. If both parties consent to informal mediation, then a mutually agreeable date is calendared. The proposed regulation requires the filing of a premediation statement upon the order of the Board. The Board, its Secretary, or a hearing officer designated by the Board or its Secretary would preside over the informal mediation. Evidence in the form of declarations may be considered. At any time during this process, either party may request that the informal mediation be converted to a petition pursuant to section 551.17. The proposed regulation also provides that all communications, negotiations, and settlement discussions between the participants are confidential.

NECESSITY

The proposed regulation is necessary to ensure that the informal mediation process is formalized and made available to all licensees within the Board's jurisdiction.

SECTION 551.17

PURPOSE OF THE REGULATION

The addition of section 551.17 gives the Board the authority to convert an informal mediation to a petition under section 3050(c) of the Vehicle Code. This provision implements a discretionary provision of the Administrative Procedure Act (Government Code section 11470.50).

NECESSITY

The proposed regulation is necessary to allow parties to an informal mediation to convert the proceeding to a formal action, i.e., a petition.

SECTION 553.40

PURPOSE OF THE REGULATION

The Board proposes to amend section 553.40 to extend the filing fee provisions to parties requesting informal mediation. Litigants that file and respond to a petition, appeal, or protest each pay a filing fee of \$200.00. The filing fee would be extended to parties requesting informal mediation as well as parties responding to the request. Under the proposed regulatory text in section 551.17(d), a party seeking to convert an informal mediation to a petition would not be charged an additional filing fee.

NECESSITY

The proposed amendment is necessary to ensure that the Board charges fees sufficient to fully fund its activities.

SECTION 595

PURPOSE OF THE REGULATION

The Board proposes to amend section 595 to extend the section pertaining to the format of papers filed with the Board to requests for informal mediation. It further clarifies that the number of the proceeding in a protest is assigned immediately upon filing by the secretary. Language is deleted that allowed the secretary to postpone assigning a number in a protest proceeding until a notice of appearance was filed and all filing fees were paid.

NECESSITY

The proposed amendment is necessary to ensure consistency in the pleadings that are filed with the Board and to delete an obsolete provision pertaining to the assigning of numbers in protest proceedings.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Board relied upon the provisions of a New Motor Vehicle Board Policy and Procedure Committee Memorandum dated October 5, 2000, in adopting the proposed regulatory text.

ALTERNATIVES TO THE REGULATION

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less

burdensome to affected private persons than the proposed action.

At the November 28, 2000, General meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. However, the Board President, Robert T. (Tom) Flesh invited and encouraged the submission of written and oral comments. Furthermore, Mr. Flesh indicated that the Board instructing staff to go forward with the proposed rulemaking, did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.